

RESPONSE

The following remarks are in response to the Office Action mailed June 22, 2006, in which the Examiner provisionally rejects claims 1-22, 24-36 and 38 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-36 of copending Application No. 11/361,061. The Examiner also rejects claims 20-22, 24-33 and 38 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,996,483 to Yip ("Yip '483").

A. Statutory Type Double Patenting

The Examiner provisionally rejected claims 1-22, 24-36 and 38 based on the same set of claims then pending in applicant's co-pending application No. 11/361,061. Applicants herein cancel claims 1-19, 34 and 35. Accordingly, with respect to those claims, the double-patenting issue is moot in both applications.

In the co-pending application, applicants have amended claim 20 to incorporate the features of original claim 35. As a result, the scope of present claims 20-22, 24-33, 36 and 38 is different from the scope of the corresponding claims in the co-pending application. Accordingly, applicants assert that the provisional rejection with respect to these claims has been obviated.

B. Claims Rejection Under 35 U.S.C. § 103

The Examiner has rejected claims 20-22, 24-33 and 38 as being unpatentable over Yip '483 as modified by using elastomeric material as the blade. Applicants respectfully traverse this rejection. As indicated in the comments below, the Yip '483 reference fails to disclose or suggest every element as set forth in independent claim 20, from which all other rejected claims are dependent.

Claim 20 discloses a food holding cup having a cylindrical sidewall with a stop block on the sidewall for interrupting the free spinning rotating of food. The Yip '483 disclosure fails to teach or suggest a structure that can be used to interrupt the free spinning rotating of food. The rib in Yip '483 is provided as a striking surface for garlic and/or peanuts but is not provided to interrupt food rotation. In contrast, Yip '483 teaches away from a stop block by

teaching that continued hitting by the beater and continued hitting against the ribs will eventually cause the cracked open garlic skin to come off. (Col. 2, lines 52-56). The Yip '483 invention relies on continuous motion of the garlic and/or peanuts and subsequently repeated bombardments to remove the skin. This motion is illustrated in Figure 3 of the Yip '483 reference, which traces the trajectory of a garlic piece 60. As a result, Yip '483 fails to teach or suggest a stop block on the sidewall for interrupting the free spinning rotating of food.

Furthermore, Claim 20 teaches the use of a rotatable flexible elastomeric arm. Yip '483 fails to teach or suggest the use of a flexible elastomeric material as a blade. Contrary to the Examiner's contention, it would not be obvious to modify Yip '483 by using elastomeric material. Even if it were true that elastomeric materials had benefits over hard plastic associated with durability or cheapness (a contention applicant does not agree with, as hard plastic can be as cheap and durable as elastomeric materials), Yip '483 teaches away from the use of flexible elastomeric materials because the reference teaches the peeling of garlic and/or peanut by *beating* the garlic and/or peanut pieces. (Col. 1, lines 33-35 and Col 2, lines 43-45) (Emphasis added). The Yip '483 invention relies on the garlic and/or peanut pieces being propelled from the blade towards the wall. (Col 2, lines 44-45). Flexible elastomeric materials are poorly suited, as compared to hard plastic, for beating or propelling objects due to their flexible and resilient nature, which would absorb much of the energy desired for beating the pieces. As a result, it would not be obvious to modify Yip '483 by substituting harder plastic blades with softer elastomeric material, because upon such modification the Yip '483 invention would perform less satisfactorily for its intended purpose, *i.e.*, beating the skin off of garlic and/or peanuts. *See* MPEP § 2143.01(V) ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.")

Additionally, Claim 20 teaches peeling food products whereby the food is *rubbed* by the rotating elastomeric flexible arm. (Emphasis added). This is in contrast to Yip '483, which teaches a peeler whereby skin of the garlic and/or peanut pieces is cracked open after striking a rib surface. The present invention teaches skin removal by rubbing, whereas Yip '483 teaches skin removal by striking. The inventions solve the same problem by significantly

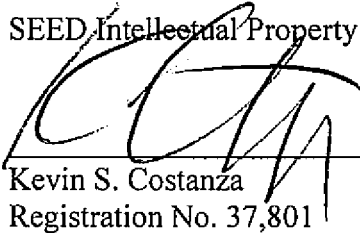
different mechanisms. As such, in addition to failing to disclose a stop block and the use of elastomeric material, the Yip '483 reference fails to teach the peeling of food products by rubbing off the skin. Because the Yip '483 reference does not teach or suggest a device having all the claimed features, the present invention is patentable under § 103 over Yip '483.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

If questions remain, the Examiner is encouraged to contact applicants' attorney at the telephone number listed below.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



Kevin S. Costanza

Registration No. 37,801

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104
Phone: (206) 622-4900
Fax: (206) 682-6031

813005_1.DOC